IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO. 660 OF 2005.
WITH
APPEAL NO. 661 OF 2005 .
WITH
APPEAL NO. 662 OF 2005.
WITH
APPEAL NO. 663 OF 2005.

Jatin Bhagwandas Vakani & anr.. ..Appellants.

vs.

Dineshchandra Govindji Joshi & ors.. Respondents.

Shri A.S. Khandeparkar i/b Madekar & Co. for the petitioners.

Shri S.R. Gelye i/b M.K. Jain for respondentNo.1.

Shri P.V. Shah with K.P. Jain for respondent No.2.

CORAM : V.C.DAGA AND J.P. DEVADHAR, JJ.

DATED : 12.9. 2005.

P.C. :

. Heard finaly by consent of the parties.

. These appeals are directed against the order of the learned Single Judge dated 16.6.2005, granting leave to defend on the conditions mentioned in the impugned order.

. It is not in dispute that original defendant No.4- respondent No.1 herein; did not comply with the terms and conditions contained in the order dated 16.6.2005 passed by the learned Single Judge;

whereas all other defendants have complied with the terms and conditions of the impugned order granting leave to defend.

. The defendant No.4 had sought time to comply with the order of the learned Single Judge which was granted by this Court. However, thereafter he failed to comply with the order impugned. He is neither challenging the order of the learned Single Judge nor has he applied for extension of time. On being asked, he left it to the discretion of the Court to pass appropriate order in the facts and circumstances of the case.

. In the above view of the matter, by consent of parties, (excluding defendant No.4),impugned order dated 16.6.2005 passed by the learned Single Judge is modified to enable the plaintiffs to claim decree against defaulting defendant. Consequently, by consent of the parties, it is necessary to modify para 8(c) of the impugned order so as to permit the plaintiffs to claim decree against the defaulting defendant. The modified clause 8(c), thus shall now read as under:

> " Needless to state that in default of compliance of these directions all consequences in law would follow. It is further needless to state that in that event, plaintiff would be entitled to decree against all the defaulting defendants."
>
> (Emphasis supplied)

The impugned order dated 16.6.2005, subject to above modification, stands confirmed. However, by consent of parties, it is also clarified that it would be open for the plaintifs to raise before the learned Single Judge issue of grant of decree against the partnership firm, if advised. In that event, it would be open for the defendants to contest such claim of the plaintiff on the grounds that may be available to them in law. Needless to mention that all the contentions of all rival parties in this behalf are kept open for being considered by the learned Single judge on its own merits. We express no opinion.

. All appeals stand disposed of in terms of this order with no order as to costs.

(J.P.DEVADHAR,J.) **(V.C.DAGA,J.)**